

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Mark Walters,	)	
	)	
Petitioner,	)	Case No. 1:02-CV-642
	)	
vs.	)	
	)	
Mark Houk,	)	
	)	
Respondent.	)	

Order Adopting Report and Recommendation

On February 4, 2005, United States Magistrate Judge Timothy S. Hogan issued a Report and Recommendation in this matter. The Magistrate Judge recommended that Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied with prejudice. This matter is before the Court upon Petitioner's objections, which relate to the Magistrate Judge's analysis and recommendations with respect to Petitioner's first, fifth, and seventh grounds for relief.

The Court has considered, in accordance with the *de novo* standard prescribed by law, the portions of the Report and Recommendation to which Petitioner has specifically objected. See Fed. R. Civ. P. 72(b). The Court's analysis does not deviate in any material respect from that of the Magistrate Judge, however. Accordingly, the Court hereby **OVERRULES** Petitioner's objections and **ADOPTS** the Report and Recommendation *in toto*.

Petitioner's petition for writ of habeas corpus is hereby **DENIED** with prejudice. The Court hereby **CERTIFIES** the appealability of the dismissal of the constitutional claims

asserted in grounds one and five of the petition because jurists of reason could debate whether these claims should have been resolved in a different manner and, alternatively, whether the issues presented in these grounds for relief are "adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003)(quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)(internal quotation omitted)). A certificate of appealability shall not issue with respect to the dismissal on procedural default grounds of the remaining claims for relief because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the two-part standard enunciated in Slack, 529 U.S. at 484-85, which is applicable to procedurally-barred claims.

The Court further **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order would be taken in good faith and therefore **GRANTS** Petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997). This action is **CLOSED**.

**IT IS SO ORDERED.**

\_\_\_\_\_/s/  
Sandra S. Beckwith, Chief Judge  
United States District Court